IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

MFA.No. 289 of 2000(B)

OPMV.1326/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANTS:
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1. Palakundan Hamza, S/o. Kunhikoya, aged 44 years, Klari amsom, Cherussola desom, Via. Randathani P.O., Swagathamadu, Malappuram.

2. Ayisha, W/o. Palakundan Hamza aged 38, do.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:
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1. Mushamankotil Marakkar, S/o. Alikutty, Driver of Jeep KLM 9234, Ilathu, Kaipupram Koppam, via. Pattambi, Palakkad District.

2. T.P.Ismayil, son of Moideenkutty, owner of jeep KLM 9234, T.P.Manzil, Kannamangalam Vengara, Malappuram District.

3. The New India Assurance Co. Ltd. Uphill Malappuram, Policy No.31/760201/52532/ 30713. Valid from 21.10.1992 to 27.2.1993.

BY ADV. SRI.LAL GEORGE for R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & V. Giri, JJ.
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M.F.A.No.289 of 2000
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Dated this the 23rd day of August, 2007.

JUDGMENT

Koshy,J.

A 13 year old girl died in a motor accident. It was found by the Tribunal that the accident occurred due to the negligent driving of the vehicle by the first respondent. The vehicle was owned by the second respondent and insured with the third respondent.

2. The accident occurred on 1.12.1992. The appellants were respectively father, aged 44 years and mother aged, 38 years old. The Tribunal awarded only a total compensation of Rs.35,000/- with interest and cost and the only the quantum of compensation is disputed. It is true that the accident occurred prior to the framing of second Schedule. A notional income of a

non-earning child is fixed at Rs.15,000/- per year under second Schedule. Here, the accident occurred in 1992 two years prior to the framing of the second Schedule. So we are of the opinion that Rs.12,000/- will be taken as the notional income. If that be so after deducting 1/3rd, Rs.9,000/- will be the monthly contribution too the family that can be calculated for loss of dependency. As already stated, father was 44 and the mother was 38 and 15 can be taken as the multiplier. If that be so, Rs.1,20,000/- will be the compensation in the case of death of a 13 year old girl. Out of this Rs.25,000/- was granted towards loss of dependency by the Tribunal. If that is taken, the balance will be Rs.95,000/-. The above additional amount of Rs.95,000/- should be deposited by the third respondent - Insurance Company with 6% interest per annum from the date of application till the date of deposit. On deposit of the amount, the claimants are entitled to withdraw the same.

3. Since there was no licence, the Tribunal has allowed the Insurance Company to get the amount reimbursed from the insured. No appeal is filed against the above. Hence, we have not changed that direction. Notice on the delay condonation

petition sent to the insured was returned twice unclaimed and therefore the notice was declared served and the delay is condoned. In view of the delay, we have allowed only interest at the rate of 6% per annum from the date of application.

Appeal is partly allowed.

J.B.Koshy,
Judge.

V.Giri,
Judge.

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